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Poachers and pirates

Improving coordination of the global response to wildlife crime

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This article aims to identify how the global response to wildlife crime can be improved and what role South Africa might play in it. To do so, we examine the emerging global wildlife crime regime and the challenges it faces. To offer an understanding of how governance could be improved, we ask how the success in curbing another transnational crime, piracy off the coast of Somalia, can serve as an example of international coordination. We discuss core lessons from the coordination and governance of counter-piracy. Through the comparison, we identify core dimensions by which the coordination of responses to wildlife crime might be improved. Our conclusion stresses the importance of more focused, inclusive and experimental forums. We end by outlining a number of core issues that South Africa should start to consider in its wildlife policies.

In January 2017 several new decisions and resolutions on wildlife crime entered into force.¹ They were the core outcomes of the autumn 2016 17th Conference of Parties (CoP17) of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), hosted by South Africa. The parties agreed, inter alia, to toughen sanctions against those violating bans on illegal trade in ivory and rhino horn. The decision was a reaction to the dramatic rise in poaching and wildlife trafficking in recent years.²

The new CITES resolutions confirm that poaching and wildlife trafficking should be considered as a form of transnational

organised crime.³ Similarly, recent reports from United Nations (UN) agencies, including its Environmental Programme (UNEP) and Office on Drugs and Crime (UNODC), observe that wildlife crime is on the rise in Africa, emphasising that it is best conceptualised as a form of transnational organised crime with considerable security implications.⁴ In INTERPOL-UNEP's December 2016 Strategic Report, 80% of governments surveyed stated that environmental crime was a top security priority.⁵

The new recognition and framing of wildlife crime as both an environmental and a transnational security problem has at least two major implications. Firstly, the transnational dimension of wildlife crime implies that no state will be able to tackle it on its own. A coordinated international response is required, one that

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focuses on trans-border and cross-jurisdictional collaboration and aims at integrating all relevant national, international and non-state actors in the coordination process. The lack of a coherent international approach to wildlife crime and the lack of capacity of most states have been identified as the core hurdles to an effective response to wildlife crime and improved conservation efforts. The complexity of the issue, its urgency and the range and number of actors involved require a rethinking of how responses to wildlife crime and conservation can be better coordinated.

Secondly, interpreting wildlife crime as a form of transnational organised crime also provides an opportunity. It allows us to learn from comparisons with other transnational crimes and how they have been addressed. We argue that significant insights can be gleaned from the international fight against Somali piracy. This response has not only been very successful but has also tested a range of novel forms of international coordination, which might provide new ideas for the fight against transnational wildlife crime.

In the next section, we outline the core characteristics of the international wildlife crime regime and the challenge of addressing it. We then summarise some of the core insights gleaned from counter-piracy strategies and ask how they might lead to new responses to wildlife crime. We conclude by discussing the role that South Africa could play in strengthening the Southern African response.

Poaching and the international wildlife crime regime

The new political salience of wildlife crime has led to the emergence of an international regime dealing with the issue. CITES is still the cornerstone of this regime. It remains, however, an overly bureaucratic and formal organisation driven by diverse national interests, while lacking

adequate means to ensure compliance with the rules it develops.⁶ CITES provides a baseline framework for how the 183 parties should regulate wildlife trade and of their commonly agreed limitations, such as in reporting stockpiles of seized ivory.⁷ However, as noted by Hübschle, '[a]s is the case with most other international conventions, there is little recourse to dealing with infractions or non-compliance by way of international enforcement'.⁸ In other words, the convention has limited bearing on non-compliant parties. Time will tell how the most recent CoP17 resolutions will be respected, applied and enforced.⁹

CITES has been complemented with a range of initiatives by international organisations and non-state actors, which have started to address related issues, particularly the poaching of elephants and ivory trafficking. To understand the challenges that the regime faces, we firstly emphasise that wildlife crime is a multi-dimensional problem that demands adequate definitions. Secondly, the multiplicity of actors involved means that the response to the problem will be complex and requires coordination.

Poaching, as defined by Lemieux, is understood as 'illegal taking' of wildlife and plants protected by national and/or international laws and conventions. This definition provides a basis from which a more systematic and detailed definition of wildlife crime can be formulated.¹⁰ The second part of the substrate – trafficking and trade – can be understood as illegal if conventions are breached.¹¹ This, however, creates a conceptual challenge. Many agencies and states define wildlife crime differently.¹² The lack of agreed definitions creates loopholes and provides opportunities for poachers and traffickers to ignore or circumvent the law. The consequence is poor law enforcement and illicit networks that include government agency officials or rangers; this creates a culture within which wildlife crimes are either not considered as

crimes or not effectively contested.¹³ Despite UNEP calling in 2014 for clarification on how the term should be conceptualised, by early 2017 no unanimous or clear definition had been agreed on.

What certainly challenges anti-poaching efforts is the lack of coherence in response. The number of actors involved has increased substantially in recent years: from myriads of non-governmental organisation (NGO) campaigns, through the development of militarised responses and pledges from African governments, to inter-governmental agencies' agendas. A multi-dimensional approach to transnational cooperation has become necessary. All mentioned stakeholders, as well as those often excluded from the dialogue – local communities – will be required to actively participate in defining and combatting the crime, and putting real pressure on those who do not follow, enforce or support the efforts of the majority of engaged actors.

Recognising the importance of improving coordination, the international community in 2010 established the International Consortium on Combating Wildlife Crime (ICWC) with the Wildlife Enforcement Network as its executive arm. The consortium is composed of five bodies operating internationally and aims to 'bring coordinated support to national wildlife law enforcement agencies and the sub-regional and regional enforcement networks that act in defence of natural resources'.¹⁴ Since 2010 it has produced a healthy list of successes.¹⁵ One such effort is the development of a Wildlife and Forest Crime Analytic Toolkit through which the consortium offers tangible support to governments.¹⁶ However, a report from September 2016 revealed that only a few Southern African governments requested support and the implementation of the toolkit, and only Botswana fully implemented the programme in 2015 – this despite an official

endorsement of the toolkit in the Southern African Development Community's (SADC) Law Enforcement and Anti-Poaching Strategy.¹⁷

Worth noting is that South Africa, which is home to 80% of the African rhinoceros populations, was in May 2017 still in a capacity-building phase.¹⁸ The biggest limitation of the toolkit is that its measures are non-obligatory.¹⁹ The CITES Standing Committee only *recommends* that states fully implement the proposals contained in the toolkit.²⁰ The lack of support for the toolkit is at best a missed opportunity for an internationally coherent response. However, it also reflects the contested legitimacy of the consortium, suggesting its work might not be inclusive enough. We argue that several local initiatives should strengthen their coordination efforts, especially across the SADC region, and that outcomes should be closely monitored.²¹

Other initiatives, such as the African Elephant Action Plan or the Elephant Protection Initiative, provide viable strategies for the region, but the absence of Southern African investment and an overarching implementation agreement threatens their success.²² Within the last two years, South Africa has started implementing an Integrated Strategic Management Approach that is yet to prove effective.²³ The list of initiatives and projects is certainly much more extensive than can be presented here. Most are led by the wide range of NGOs now active in the field. The fact that poaching has not significantly decreased despite these interventions suggests that new strategies are needed, including those borrowed from elsewhere. In the next section, we discuss whether the response to Somali-based piracy can provide fresh ideas.

Lessons from the fight against Somali piracy

At first glance, piracy and wildlife crime have little in common. However, both are forms of contemporary transnational organised crime.

They are border-crossing phenomena, and perpetrators are organised in transnational networks that include local foot soldiers who commit the crime, international investors, and transnational financial flows.²⁴ In addition, the same international actors invested in preventing wildlife crime, such as the UNODC or Interpol, are active in addressing piracy. Piracy and poaching are crimes that can arise and escalate quickly. Between 2008 and 2010 Somali piracy developed into a major international crisis, spurring the intervention of the UN Security Council. Similarly, the rapid increase in poaching and wildlife trafficking in the last few years, and in particular the growing number of warnings that wild African wildlife populations face extinction, suggests an emerging crisis.²⁵

Encouragingly, Somali piracy was quickly contained to reasonable levels. It took the international community less than four years – from the first UN Security Council resolution to the last known successful attack – to put in place a system that keeps pirates in check.²⁶ What were the ingredients of that system and could it be replicated to address wildlife crime? The Lessons Learned Project of the Contact Group on Piracy off the Coast of Somalia (CGPCS) provides good insight into the methods used; lessons that are relevant to tackling wildlife crime.²⁷

Firstly, in responding to Somali piracy, the international community took a focused approach. Within months after the first UN Security Council resolution, several states had created an informal coordination mechanism. The CGPCS was launched in early 2009 as an ad hoc informal coordination body that exclusively focused on piracy off the coast of Somalia.

Secondly, the approach taken by the CGPCS was inclusive. A forum was provided in which all organisations active in and relevant to counter-piracy could participate and share their

agendas, activities and analyses. This included representatives from states and international organisations active in counter-piracy, but also technical experts from implementing agencies such as the International Maritime Organization, UNODC and Interpol. Representatives from the regional and central governments of Somalia and from regional states such as Kenya and the Seychelles participated, as did representatives from the shipping industry and NGOs. It was recognised that piracy was a multi-dimensional problem that required different forms of legal, law enforcement, diplomatic and development expertise. The approach emphasised that a solution could not be found without close consultation with actors from Somalia and the East African region.

Thirdly, the CGPCS was an ad hoc, informal, creative and very pragmatic forum that was willing to experiment with new ideas and strategies. The core objective was not to set up a new rule-based international organisation, grand strategy or action plan, but to identify pragmatic solutions to contain piracy. Rather than laying out rules and ensuring their enforcement, or negotiating legally binding documents, the focus was on information exchange, and on developing collaborative guidelines and concrete implementable projects in areas such as joint patrols and surveillance, capacity building, the handling of suspects and the regulation of private security providers. This approach kept big politics out of the discussion, helped avoid diplomatic pitfalls and focused on finding pragmatic implementable solutions.

Fourthly, the immediate core priority of the group was to end a culture of impunity.²⁸ States arresting pirates had been unwilling to prosecute them. To respond to this problem, a sophisticated legal structure was developed within which the responsibility for arrest, prosecution and imprisonment was shared across jurisdictions. The structure

was implemented through Memoranda of Understanding between arresting and prosecuting states, legal capacity building, as well as the sharing of criminal evidence across different national law enforcement bodies. While this primarily addressed the arrest of pirates at sea, an informal Law Enforcement Task Force and an evidence-sharing centre were established to prosecute the financiers and backers of piracy.

In following these principles, the CGPCS successfully orchestrated an international coordinated response, characterised by a close collaboration of naval forces and the shipping community at sea, as well as law enforcement bodies, and included capacity building in Somalia and the wider region. It was the focused, informal and creative approach of the CGPCS in orchestrating these activities that made the difference.

The problem of wildlife crime differs from piracy in many important respects. The UN Convention of the Law of the Sea defines piracy to be a crime committed on the high seas, outside of national territories and jurisdictions.²⁹ Moreover, the main country from which piracy operations were planned and conducted, Somalia, was a state with fragmented governance structures and limited sovereignty. Hence, in the case of piracy, sovereignty was less of a concern than would ordinarily be the case.³⁰ This contrasts with land-based poaching, where multiple sovereign states, each with their own interests and jurisdictions, are involved. The piracy success story was partly a result of the sense of urgency with which the international community treated the problem. Because the UN Security Council saw piracy as threatening global trade and commerce, and as exacerbating insecurity in Somalia, it framed it as a priority issue.³¹ And while the UN Security Council has recognised wildlife crime as a problem and started to address it, it is unlikely that, in the current

geopolitical climate, it will gain the momentum that piracy did.³² Wildlife crime does not threaten global commerce, nor are the primary victims of the crimes citizens of countries represented in the council. Finally, the security implications of wildlife crime are not straightforward.

Piracy was addressed through a tailored mix of instruments, including naval forces, the regulation of the industry, private security providers, community engagement work and capacity building. Wildlife crime is undoubtedly different and will require a different set of measures. In particular, as various commentators have noted, the use of the military instrument and of private security providers is much more problematic, as it has the potential to exacerbate the human insecurities from which this crime develops.³³ While the problems differ, and a different mix of tools is required, it is the principles of coordination and style of governance developed in the counter-piracy response that might steer the fight against wildlife crime in new directions. The Somali piracy case illustrates how well-tailored, pragmatic multi-stakeholder responses can make a difference in preventing wildlife crime.

South Africa's role and the redirection of the response

The framing of wildlife crime has changed considerably in recent years. Because it cuts across borders and involves transnational criminal networks, many states have come to see it as a security issue. The consequences of this reframing, and what it might mean for how responses can be coordinated locally and nationally but perhaps, most importantly, internationally, are thus poorly understood. In this article we have shown that a global wildlife crime regime is evolving, but that it suffers from a lack of clear definitions and coherence. It has thus far failed to effectively reduce poaching and trafficking.

Lessons learned from responses to Somali piracy might provide a sense of direction here. Concentrating efforts by narrowing issues into manageable problems, adopting a pragmatic, informal approach rather than embracing rhetoric or drafting declarations and new rules, developing inclusive forums, and prioritising the end of impunity through innovative legal structures, are some of the principles that can be gained from the counter-piracy experience. How can these principles be translated into South African policies and the position it takes on the international stage? There are at least five possibilities:

Strengthen leadership in multi-lateral forums and show a willingness to experiment

South Africa is not only directly affected by wildlife crime; it is also a regional powerhouse. Whether it engages as a regional leader or not makes a difference. Considering the important decisions taken at the CoP17, the fact that South Africa hosted it sent a strong message to the international community that it is willing to take leadership on the issue.

Given the urgency of the situation, different mechanisms will be needed. South Africa is well positioned to initiate a forum, which, drawing on the core principles of counter-piracy, has the potential to offer remedies to wildlife crime. Inviting the international community to experiment in an ad hoc, informal and focused forum allows the development of pragmatic solutions outside the institutional politics that drive organisations such as the African Union and SADC. While African regional organisations are important political institutions, they are only one part of the puzzle. A broader, more inclusive forum provides the opportunity for pragmatic measures, developed under African leadership but with ensured buy-in from donor states, international organisations and NGOs.

Work in an inclusive forum to clarify the role of different agencies

The plurality of actors engaged in the fight against wildlife crime has grown substantially. Working in an inclusive forum that brings all actors together allows for the clarification of roles and avoids duplication. A substantial part of the response to wildlife crime today is delivered by NGOs and international organisations, who often deliver their own version of conservation interventions, ranging from saving the survivors to proclaiming a war on poaching. Yet this work is often not well coordinated with that of state agencies. A better coordination of these actors and a sustainable dialogue would improve the response. An inclusive forum, similar to the CGPCS, might be a remedy for this situation.

End the culture of impunity

South Africa needs to lead by example. A top priority should be to end the culture of impunity whereby poachers and members of their networks are not prosecuted. If law enforcement is not the only response, a viable starting point is to develop an international legal structure through which law enforcement agencies can cooperate, transfer suspects and share evidence and information. South Africa, so far, has not been particularly pro-active in the prosecution of poachers, and few of the organisers and traffickers have been arrested. Demonstrating its willingness to enforce the law, and accepting assistance from international bodies such as the ICCWC, will be important if it is to gain credibility.

Recognise the link to corruption

Ending impunity also requires that more attention is paid to the role of corruption in wildlife crime. There is sufficient evidence that bribing rangers, border authorities, and local politicians and authorities is one of the core enablers of poaching. While there is no quick

fix to such corruption, by formally recognising its role in wildlife crime South Africa can ensure that more attention is paid to it, as already acknowledged in the Department of Environmental Affairs' policy workshop, the Rhino Conservation Laboratory.³⁴

Work with and integrate communities

Finally, it is increasingly clear that one of the keys to successful anti-poaching policies is engagement with communities around wildlife reserves. South Africa could take the lead in exploring how such engagement is best coordinated, and how best practices are learned and reproduced.

A comparison between wildlife crime and piracy reveals new ways in which the international response to wildlife crime might be redirected and better coordinated. We have argued that there is a clear set of principles that can be drawn from the fight against piracy, and which might prove useful. Quite obviously, wildlife crime and piracy differ, yet both are forms of contemporary transnational organised crime with considerable security implications. There is an urgent need for creative thinking and new governance solutions, given the rise in poaching and the decline of species.



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Notes

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